IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9745 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DHRANGADHRA CHEMICALS WORKS LTD

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 9745 of 2002
MR PARESH M DAVE for Petitioner No. 1-2
MR JITENDRA MALKAN for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 20/10/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

Learned Standing Counsel, Mr.Jitendra Malkan raises preliminary objection about the maintainability of this petition before this court on the ground that the petitioners have got alternative remedy of statutory appeal under Section 128 of the Customs Act before the Commissioner of Customs (Appeals), therefore, he submitted that this court should not exercise its writ jurisdiction in favour of the petitioners.

In view of the above, learned counsel Mr.Dave for the petitioners seeks permission to withdraw this petition with a liberty to approach the Commissioner, Customs (Appeals) by way of appeal under Section 128 of the Customs Act with a request that delay in filing the appeal be condoned by the appellate authority and his main appeal be decided on merits in accordance with law to which learned Standing Counsel Mr.Malkan has no objection.

Impugned order dated 28.8.2002 (Annexure-O) was immediately challenged before this court by the petitioners by way of this petition on 27.9.2002. In view of this while granting permission to withdraw this petition to the petitioners to file appeal before the Appellate Authority under Section 128 of the Customs Act, we direct the Appellate Authority to condone the delay in filing the appeal late and decide the same on merits in accordance with law after extending an opportunity of hearing provided the appeal is filed within four weeks from today along with application for condonation of delay. Accordingly, permission is granted to withdraw this petition and the petition is disposed of as withdrawn. Rule is discharged with no order as to costs.

Copy of this order be given to both, learned counsel for the petitioner, Mr.Dave and learned Standing Counsel, Mr.Malkan for its immediate implementation.

(B.J.Shethna, J.)

(Sharad D. Dave, J.)

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